

REYNELL COATES, WALTER R. JOHNSON, AND JAMES EIGHTS.

[To accompany Senate bill No. 141.]

MAY 25, 1842.

Mr. COWEN, from the Committee of Claims, made the following

REPORT:

The Committee of Claims, to whom were referred the petitions of Dr. Reynell Coates, Walter R. Johnson, and James Eights, and Senate bill No. 141, report:

That the petitioner is one of a number of learned and scientific citizens of the United States, who were selected by the Secretary of the Navy, in December, 1836, to form a "scientific corps, to be attached to the South Sea surveying and exploring expedition;" which at the time of their selection, it was expected would sail in the year 1837. The selection was communicated to the petitioner by a letter of Mahlon Dickerson, then Secretary of the Navy, dated 28th of December, 1836. A letter from the Secretary of the Navy, dated June 30, 1837, to Dr. Coates, requested him to consider himself on duty as a member of the "scientific corps," from the 4th day of July following; and by another letter, of the 13th of August, 1838, he was informed that the "scientific corps" attached to the expedition had been reorganized, and that under the new arrangement his services would be no longer required.

Dr. Coates has been paid, at the stipulated rate of compensation, \$2,500 a year, for the time from July 4, 1837, until his dismissal. The petitioner states, in his petition, that he "accepted the appointment on the day of its reception, under the strongest personal assurances of the President and the Secretary of the Navy that the engagement was for a three years' voyage at least; that he considered himself, in good faith, as actually on duty, from the day of his acceptance of the appointment to that of the reception of a letter from the late honorable Secretary of the Navy, (J. K. Paulding,) dated 13th of August, 1838, which letter discharged him from the service;" that he "relinquished, in good faith, all other occupations, at a sacrifice of interests exceeding his salary in value, and devoted his time exclusively to the service of Government, from the time of his appointment to that of his abrupt discharge." The petitioner claims pay from the time of his acceptance of the appointment to the 4th of July, 1837, during which he represents that he was in "actual service," "together with remuneration for heavy expenses incurred while under sailing orders, and attached to the frigate Macedonian, in 1837 and 1838; and for the loss of valuable time consequent to his discharge without previous notice." He represents that the delay in the payment of his claims, and his "sacrifice of time and posi-

tion," have involved him in pecuniary ruin, and the usefulness of several years of his life have been in a great degree destroyed.

The petitions of Walter R. Johnson and James Eight, who were selected at the same time with Dr. Coates, and for the same service, and dismissed under the same circumstances, have been referred to the committee, and remain undisposed of. These petitions raise all the same questions of the one now under consideration, and this report will alike apply to them as to this.

Though these claims may not be very large in amount, the committee deem the principles involved important. As much time has been given to their consideration as the committee could spare from other duties. They are for services actually performed, and for damages resulting from breaches of contracts.

What contract existed between the petitioner and the United States? Was it violated to the damage of petitioner? Did the petitioner perform services for Government, for which he is uncompensated? These are the questions which we are called upon to answer; and, if answered in favor of the petitioner, it will become necessary that the amount due on these accounts be ascertained.

The petitioner and his associates are men of science. They had distinction as such, at the time they were selected for the important service assigned them. They were devoted to the acquisition and dissemination of useful knowledge, when the Secretary of the Navy, acting for and on behalf of their Government, announced to them that their time and talents were required in the public service. The character of the duty assigned to them, and the field of their action, would impose upon them heavy responsibilities, and subject them to many privations. The pecuniary compensation offered, and the knowledge to be acquired thereby, induced them to accept the invitation, and relinquish whatever situations in business they may have occupied, and devote themselves to the performance of the duties of their station. In the adjudication of claims of individual citizens, no distinctions can be regarded. Men who devote themselves to the advancement of science and knowledge, and the honor and improvement of their country, establish claims to public gratitude; but, without a contract for pecuniary compensation, they establish no claim against the Treasury. Such services, voluntarily performed, are no basis on which to found a claim for payment from Government. But while this principle should be strictly and rigorously enforced, contracts for such services should be faithfully performed. In all cases, justice, without denial or delay, should be administered by the Government to the citizen, and especially to those intellectual men whose improvements in the arts and labors in science have done and are doing so much for the improvement of society. The very nature of their pursuits excludes this class of men from those fields of adventure where the enterprising, sagacious, and prudent, make fortunes. The primary object of their pursuit is useful knowledge, and its application to the wants of mankind. Wealth with them is a secondary consideration. We, who are acting in this behalf, for a just people, should not fail to guard the rights of those who render valuable service.

What was that contract which we are to pass upon? The letter of the Secretary of the Navy of 28th December, 1836, containing notice to Dr. Coates of his selection, or, as its terms import, being his appointment as a member of the scientific corps to be attached to the South Sea surveying and

exploring expedition, contains the terms of the contract under which Dr. Coates entered the service of the country. That letter contained proposals; it designated the nature of the service which would be required, and the amount of compensation. It was submitted to the petitioner, as a proposition which he was free to accept or reject. He accepted it, and thereby the contract was closed; and as there has never been, so far as the committee are informed, any doubt expressed or entertained as to the authority of the Secretary of the Navy to make such contract, the United States of the one part, and the petitioner of the other, became bound by it. This claim, the rights of Dr. Coates, and the liabilities of Government, are to be tried and determined by the terms of that letter. The following is, in words, letters, figures, and punctuation, a true copy of it:

NAVY DEPARTMENT, *December 28, 1836.*

SIR: You are hereby appointed a member of the scientific corps to be attached to the South Sea surveying and exploring expedition, now being fitted out under an act of Congress of the 18th of May last. Your compensation will be at the rate of \$2,500 a year, and one ration per day while on duty under the direction of this Department. Your allowances for traveling will be the same as those made to officers of the navy.

I am, very respectfully, your obedient servant,

MAHLON DICKERSON.

DR. REYNELL COATES, *Philadelphia.*

This letter, it is submitted, did not confer an office upon Dr. Coates. It is no commission. The members of the "scientific corps" were not officers. They entered into the service of the Government, under a contract. Offices, in this Government, are created by the Constitution or act of Congress, and appointments to office are required to be made "by the President, by and with the advice and consent of the Senate," except in cases where Congress "by law vests the appointment" "in the President alone, in the courts of law, or in the heads of Departments." There is no law, nor was there in 1836, creating the office of "member of the scientific corps to be attached to the South Sea surveying and exploring expedition." There is not now, nor was there ever, any law of Congress vesting the appointment of members of that corps in the President or head of a Department. The exploring expedition was fitted out by act of Congress approved May 14, 1836, by which the President of the United States was authorized "to send out a surveying expedition to the Pacific ocean and South seas, and for that purpose to employ a sloop of war, and to purchase and provide such other smaller vessels as may be necessary and proper to render the said expedition efficient and useful." To carry into effect this law, accomplish the objects of the expedition, and make it "efficient and useful," a scientific corps, composed of talented, learned, observing, investigating, and profound men, was, by the President, deemed necessary, and the Secretary was empowered to employ such men, to constitute the corps. In the execution of this authority, the Secretary selected the petitioner, and Messrs. Johnson and Eights, with others. The selections were unquestionably in every respect suitable and proper, so far as the three claimants were concerned; and, so far as the committee are informed, the others were unobjectionable.

The members of this corps not being officers, and standing in an unoffi-

cial relation to the Government, no usage or practice, nor any act of Congress or provision of the Constitution, applicable alone to officers, bears upon this case. The petitioner is to be regarded as a citizen having a contract with his Government for certain designated services, to be performed for a fixed salary. Though good policy may have required that the President and heads of Departments should have the power, and though they may have been clothed with the power, to dismiss certain officers from the public service at pleasure, it does not follow that contracts for services entered into between the agents of the United States and individuals may be altered or annulled at the option of either party, without the assent of the other. A contract to which the Government is a party is a pledge of the faith of the Government. The liabilities created by it are of perfect obligation; and if, from policy, convenience, or necessity, it is violated by the Government, it is bound to afford a prompt and speedy remedy. In construing this contract, the terms of which they find in the letter of the Secretary of December 28, the committee leave wholly out of view the practice in relation to offices created by act of Congress or the Constitution, and to officers appointable by the President or head of a Department. The letter of the Secretary contained a proposition. The Secretary proposed to appoint Dr. Coates a member of the scientific corps. It was for him to accept or reject. The terms of the service were specified in the letter; also the rate of compensation and the nature of the service. Dr. Coates determined to accept the proposition, and gave notice of that determination. This proposal on the one hand, and acceptance on the other, constituted a binding valid agreement. The United States, through the Secretary, in consideration that Dr. Coates had agreed to perform service as a member of the corps, undertook to employ him for the time the service should continue, and pay him his salary. The undertaking was to employ Dr. Coates for a certain period—for the time that would be consumed in the contemplated expedition—the number of months or years being uncertain, but to be rendered certain. The corps was to be attached to the expedition—to an expedition then “fitting out.” The undertaking was, that the petitioner should be, not that he was, attached to the expedition. He was appointed a member of the corps. That was done. The attachment to the expedition was to be done. The committee understand this to be a promise that he should go out with the expedition. That he should be employed by the Government during the expedition, from the time of its embarkation until its return. The contract was, as the committee think, reciprocally binding. Dr. Coates was bound by it to render the services. He had no more option to annul the contract than the Secretary.

In construing contracts, it is not unimportant to consider the consequences to the parties, if one or another construction be adopted. Parties to contracts are presumed to act with especial reference to the subject-matter. If this arrangement between the Secretary and the petitioner was not binding upon the Government, it will not be contended that it was binding upon the petitioner. If the United States could abrogate the arrangement at pleasure, so could he. Both parties were bound, or neither. If Dr. Coates was not bound, neither was any of the corps. This consequence would hardly be admitted. It is not to be supposed that sensible men would act thus loosely in matters of such importance. The Secretary could not have supposed that he was not obtaining from these scientific

men a binding promise to perform the duties assigned to them. He could not have left so essential a part of his force free to go with the expedition, or stay, as might suit their convenience. And how was it on the other hand? How were those who accepted the appointment to this service situated? Would they have accepted the invitation to join the corps and accompany the expedition, if they had supposed the situation was subject to the caprice of any individual? That they could only hold it as matter of favor, and not of right? None are qualified for the duties required of members of such a corps, on such an expedition, but those who are in the prime and vigor of manhood, of good health, extensive learning, and of habits of industry. Such were the petitioner and his associates. They not only had these valuable qualifications, but they had acquired distinction in honorable and lucrative professions. Such men, in this or any other country, where intellect and science are appreciated, will have situations in business, after a few years of practice in the departments to which they are devoted, which are valuable. Though such situations are rarely sources of great wealth, they are estates upon which those who hold them can rely for respectable incomes. They are regarded as valuable, and are not parted with by prudent men without what is deemed an equivalent. These situations cannot be retained without uninterrupted application to business. If they are given up to others for a brief period, they cannot be regained without much sacrifice of time, and often not by that. The petitioner was in business when he was selected for this service. He was successfully engaged in an honorable profession. He could not but have foreseen that his acceptance of the proposed appointment would, as it did, compel him to surrender his professional business in Philadelphia, where, among learned and honorable competitors, there were enough ready to supply his place. Is it probable that he would have given up his business, the fruits of many years of study and labor, for a promise of other employment, that might or might not be performed, at the mere will or caprice of any one or more men? It is not to be presumed; and nothing short of clear and unequivocal terms in the contract would authorize such a conclusion. We ought not to place a construction upon this agreement that will lead to such a consequence, if it can be avoided. This Government ought not to subject itself to the charge of having created an expectation, in any of its citizens, of years of honorable and profitable employment, and thereby having induced them to part with valuable situations, subject themselves to heavy expense, and then disappointing them. It cannot be done with impunity.

This claim, it is submitted, ought not to be rejected upon such grounds, if it can be avoided. It will be doing a wrong to a meritorious citizen. It cannot be done without reproach. If contractors with Government suffer by the vicissitudes of seasons, by fluctuations in prices, or by any of those adversities to which all adventurers are subject, they have no valid claim for those causes to relief. The Government does not undertake to compensate for such losses. But in this case our faith is pledged. A citizen has confided in it; he has made heavy sacrifices, relying upon the promises of a high public functionary, fully authorized to contract on behalf of his Government; he has given up his business, and is "involved in pecuniary ruin."

The committee, being of opinion that the United States became bound to give the petitioner employment, for the salary and emoluments offered and accepted, during the continuance of the expedition, it follows that his

dismissal was a breach of the contract by the United States. If the committee do not err in this opinion, if their construction of the contract be correct, the petitioner is entitled to relief. He is entitled to whatever damage he sustained by reason of the refusal of the United States to employ him, as they were bound to do. This would extend to such damages as he sustained by the purchase of necessaries for the expedition, and the difference between the salary and emoluments for the expedition, and what his services were worth, under all the circumstances, at home. He is, as the committee think, entitled to pay for whatever time he was actually employed in the service of Government, after his selection and acceptance, on the 4th of July, 1837.

The petitioner contends that the letter of the Secretary, of December 28th, 1836, proposed to pay a salary of \$2,500 a year, from the date of acceptance by the petitioner. This construction of the letter has been maintained by Dr. Coates, and his colleague, Mr. Johnson, with much ability, in letters by them addressed to a late Secretary of the Navy. (See those letters, 7th vol. Ex. Doc., 2d sess. 25th Cong., No. 147, pages 366 and 377.) A critical reading of the letter, and adhering to rules of grammar, sustains their views. In construing contracts, however, arbitrary laws of syntax and prosody may be controlled by reference to the subject-matter of the contract. The letter proposed to pay \$2,500 a year. It is contended that this was made without limitation. It was also to give one ration per day. This allowance petitioner insists was limited to the time when he was on duty, but that that limitation does not extend to the salary. The punctuation certainly favors this view. The letter says: "Your compensation will be at the rate of two thousand five hundred dollars a year, and one ration per day while on duty under the direction of this Department." While the committee concur in the justice of the criticism on the letter, as a mere question of grammatical construction, yet they think that it is competent for them to look beyond this, and to find the intention of the parties to have been different from what such a construction would import, provided that construction is unreasonable, and not in conformity with the subject and object of the contract. The arrangement was to pay a salary for service. The service was to be adequate to the salary, and the salary adequate to the service. It was not the object of Government, and the committee are satisfied, from the actual habits of the petitioner, that it was not his intention, that he should be a sinecure, receiving a salary without rendering service. It was doubtless the expectation of both parties that he should be actively employed while he was under pay. The committee have no doubt but that the rate of compensation for services performed by the petitioner, for the United States, from the time he was selected, should be at the rate of \$2,500 per year. The value of those services were agreed upon. That value should govern.

The committee have thought it the most proper course to refer this question to the Secretary of the Navy, to estimate the claim of the petitioner and his colleagues upon principles contained in the act of reference. This is done for the reasons that it was thought the estimate could not be made in time for this session by the committee; and that, if any thing be due to the petitioner, it should be speedily paid. The committee, not concurring exactly with the Senate, either in the grounds for or measure of relief, recommend an amendment of Senate bill No. 141, herewith reported.

